Entered on Docket
February 03, 2011
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

MARTIN E. ROSSITER, No. 10-14030

Debtor(s).
_____/

Memorandum on Motion for Order Determining Value

Debtor Martin Rossiter filed a Chapter 13 petition on October 20, 2010. He owns a very modest condominium at 1053 Golf Course Drive, Rohnert Park, California. His motion to avoid the junior lien of creditor Wells Fargo Bank is now before the court. The senior liens total about $137,000.00, so the Bank is an unsecured creditor and its lien is avoidable pursuant to § 506(a)(1) of the Bankruptcy Code if the property is valued at a lesser amount.

Both Rossiter and the Bank produced qualified expert testimony as to the value of the property. Rossiter's expert is somewhat more credible, as the Bank's expert has an ongoing relationship with the Bank and has done very many appraisals for it.

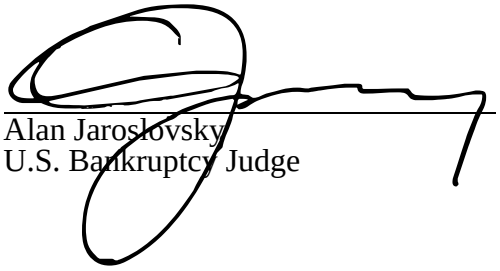
From the expert testimony, the court finds that several months before the bankruptcy the condominium was worth as much as $150,000.00. By the time of the filing, the value had declined to $120,000.00, and it is now worth even less due to numerous distressed sales of similar condominiums in the same area.

The parties have argued about whether the petition date, the date a plan was proposed, or the

current date is the proper date for valuation pursuant to § 506(a)(1). The statute prescribes the petition date as the proper date for personal property valuations, but is silent as to real property. The parties have not briefed the issue. However, it appears moot in this case as the court finds that the value of the property has never been more than the amount of the senior liens since the petition was filed.

For the foregoing reasons, the motion will be granted. Counsel for Rossiter shall submit an appropriate form of order.

Dated: February 3, 2011



Alan Jaroslovsky
U.S. Bankruptcy Judge

Case: 10-14030 Doc# 25 Filed: 02/03/11 Entered: 02/03/11 15:44:35 Page 2 of 2